LEMBAGA LETRIK NEGARA TANAH MELAYU v. SYARIKAT KLANG ELECTRIC

[A.C.J. (Pawan Ahmad J.) April 12, 1974]
[Kuala Lumpur — Civil Appeal No. 10 of 1973]

Tort — Negligence — Damage to cable caused by servant of respondent — Electricity Ordinance 1949, ss. 75 & 88(1).

The respondent after obtaining the permission of the Lembaga Letrik Negara Klang, carried out certain electrical installation works at its premises. The works necessitated the driving of an earth pipe 7 feet into the ground which was accomplished after the respondent had dug a 3 foot by 3 foot hole at the site and had found nothing there. There was no marker at the site. Subsequently a fault was detected in the underground cable belonging to the appellant outside the premises of the respondent. It was found that an iron pipe had damaged the cable sheathing thus exposing a section of the lead sheet therein through which water had seeped in and caused a breakdown. In an action for damages against the respondent the appellant relied on two grounds; the first that the respondent was liable for negligence at common law or alternatively under section 88(1) of the Electricity Ordinance. The lower court rejected the allegation of negligence on the part of the respondent and found with regard to section 88(1), that the respondent had complied with the requirements of the Lembaga Letrik Negara and had exercised the care of a skilled man in doing the operation. The Lembaga Letrik Negara had approved the work and supplied the electricity.

On appeal to the High Court,

Held, dismissing the appeal: (1) for the appellant to succeed at common law negligence it was necessary for him to prove that the respondent owed a duty of care to the appellant and as a result of the respondent's failure to exercise that duty of care the appellant had suffered damage. The respondent had had a licence to carry out the works and had complied therewith. The damage caused to the cable was not something which the respondent could reasonably have forseen;

(2) section 88(1) of the Electricity Ordinance has to be read in the context of section 75 of the Ordinance. Since the respondent had obtained the prior permission of the Lembaga Letrik Negara and had taken sufficient precautions before driving in the pipe, the respondent was not liable to pay compensation for the damage to' the cable.

Case referred to:-

(1) *Canada Sugar Refining Company* v. *Reg.* [1898] A.C. 735 (741).

CIVIL APPEAL.

Bhag Singh for the appellant.

James Gregory Fernandez for the respondent.

Pawan Ahmad J.: On September 12, 1968 the Syarikat Klang Electric (respondent) submitted to the Lembaga Letrik Negara, Klang an application for a licence for the installation of wiring at premises No. 63 Jalan Kapar, Klang. Later in carrying out this installation work the respondent had to drive in an earth pipe 7 feet long into the ground, 6 inches away from the road side drain. Subsequently on January 31, 1969 the Lembaga Letrik Negara, Klang was notified that the work was completed. However, electricity was supplied to the premises only on March 14, 1969.

The day before this supply was given, that is on March 13, 1969, Hud bin Daud (PW1) the Assistant Engineer attached to the Lembaga Letrik Negara, Klang received a phone call of a likely breakdown in the distribution feeder. So he carried out an inspection of the sub-station at Jalan Kapar and traced the faulty section to be at one of the distribution feeders. After having isolated the faulty section he contacted the Meter Protection Department, Petaling Jaya for assistance.

On the recommendation of the Meter Protection Department an excavation work was carried out in the presence of PW1 at this site fronting premises No. 63. After the excavation had been done, PW1 noticed that a two-inch galvanised iron pipe connected to a small installation wiring for earthing had penetrated through the brick cover and scraped against the cable sheathing, thus exposing a section of the lead sheet through which water had seeped in and caused the breakdown. As a result 26 yards of the damaged cable had to be replaced.

However, it was not until about 6 months later that the respondent informed the appellant of the damage to the cable by a letter dated September 18, 1969 — P1. In the same letter the appellant informed the respondent that the cost of replacement of the damaged section of the cable was $3,390 and demanded payment of this amount. The respondent replied on September 22, 1969 (P2) denying liability. Finally on June 5, 1970, the appellant filed an action for damages against the respondent in the Sessions Court, Klang vide Civil Action No. 48 of 1970. At the trial the appellant alleged that the respondent was vicariously liable in damages because the damage to the cable was caused by and due to the negligence of its servants. Alternatively, the appellant contended that in any case the respondent would be liable under section 88(1) of the Electricity Ordinance No. 30 of 1949 to pay the amount claimed by the appellant.

The learned President of the Sessions Court found that the appellant had failed to prove that the respondent knew or ought to have known that the cable had already been laid under the ground when the respondent drove in the pipe and in the circumstances the respondent could not have foreseen the danger. The President of the Sessions Court therefore rejected the appellant's allegation of negligence on the part of the respondent. Further, on the alternative claim under section 88(1) of the Electricity Ordinance the President of the Sessions Court found that the respondent had complied with the requirements of the Lembaga Letrik Negara and had exercised the care of a skilled man in doing the operation because the Lembaga Letrik Negara approved the work and connected the supply on March 14, 1969. Similiarly the alternative claim of the appellant was also dismissed by the President of the Sessions Court.

The appellant being dissatisfied with the finding of the President of the Sessions Court now appeals to this court. The grounds of appeal argued before me can be summarised as follows. The President of the Sessions Court was wrong in not finding that the respondent was liable for negligence at common law or alternatively under section 88(1) of the Electricity Ordinance.

For the appellant to succeed on common law negligence it would be necessary for him to prove that the respondent owed a duty of care to the appellant and as a result of the respondent's failure to exercise that duty of care the appellant has suffered damage. It is the contention of the appellant that the failure of the respondent to consult all the Government Departments before carrying out the works amounted to negligence. However, in the present case the res-

pondent had obtained at least the permission of the Lembaga Letrik Negara, Klang, before carrying out the works and there is no evidence to show that the respondent had committed any breach of any of the conditions of the licence granting the approval to carry out the works. The damage caused to the cable was not something which the respondent could reasonably have foreseen because there was no marker anywhere near the site. Moreover, the respondent drove the earth pipe 7 feet deep into the ground only after having taken the precaution of digging a hole 3 feet wide and 3 feet deep and finding nothing at that site. In my view the appellant has failed to prove negligence on the part of the respondent and the appeal on this ground will therefore fail.

Next, the provisions of section 88(1) of the Electricity Ordinance on which the appellant relies for the alternative ground reads as follows: —

"Any person who removes, destroys, or damages, whether wilfully or otherwise, any installation .... before any court."

Counsel for the appellant submitted that on his interpretation of the said section the respondent would in the present case be liable to pay full compensation for the damages to the cable whether done wilfully or otherwise because it imposes strict liability. He based his argument on the meaning of the word "otherwise" in this section as defined in *Stroud's* Dictionary.

In this connection, I think it will be necessary to refer to section 75 of the Electricity Ordinance which makes it an offence to lay or carry any mains, pipes, etc. without first obtaining permission, the text of which reads as follows: —

"No person shall lay or carry any mains, pipes, conduits or wires in, along, through, across, over or under any street or place in a manner which is likely to interfere with or cause damage to any electrical works or apparatus of the Federal Government or of any State Government or of the Board without first obtaining permission from the Board. Permission may be granted or withheld at the discretion of the Board, or may be granted upon such terms and conditions as the Board thinks fit to impose."

It has been said from time to time that the general principle of the construction of a statute is that the meaning of a statute and the intention of the Legislature in enacting it can only be properly derived from a consideration of the whole enactment and every part of it in order to arrive, if possible, at a consistent plan. In *Canada Sugar Refining Company* v. *Reg.*,[1] Lord Davey said: —

"Every clause of a statute should be construed with reference to the context and the other clauses of the Act, so as, so far as possible, to make a consistent enactment of the whole statute or series of statutes relating to the subject-matter."

In the circumstances it is my considered opinion that section 88(1) of the Electricity Ordinance would have to be read within the context of section 75. Since the respondent had obtained the prior permission of the Lembaga Letrik Negara and had taken sufficient precautions before driving in the pipe it is also my view upon reading the two said provisions together that the respondent cannot be liable under section 88(1) to pay compensation for the damage to the cable and therefore the appellant also fails on this ground. The appeal is therefore dismissed with costs.

Appeal dismissed.

Solicitors: *Ariffin & Ooi; Chin & Fernandez.*

RE SHIRLE GORDON; SHIRLE GORDON v. MINISTER OF HOME AFFAIRS

[O.C.J. (Abdul Hamid J.) April 16, 1974]
[Kuala Lumpur — Selangor Miscellaneous Criminal Application No. 6 of 1974]

Banishment — Whether applicant is a citizen or exempted person — Permanent resident, whether person in specified class — Onus on applicant to prove that he is a citizen or exempted person — Banishment Ordinance, 1959, ss. 5, 10, 12 & 17.

The applicant was served with a Banishment Order pursuant to section 5 of the Banishment Ordinance 1959. The Ordinance by virtue of section 12 provides for a category of persons who are exempted from the Ordinance by means of an order made under that section. In this case no such order had been made. The applicant was not a citizen but was a person who had been granted only an entry permit and allowed permanent residence in the country. The applicant pursuant to section 10 of the Ordinance applied to the High Court for an order that the banishment be set aside on the ground that she was a person in respect of whom a Banishment Order could not be made.

Held: the onus of proof lies upon the applicant to prove that she was a person in respect of whom a Banishment Order could not be made; no order bringing the applicant within the category of exempted persons had been made and therefore the applicant could not succeed in the claim that she came within the category of exempted persons.

MISCELLANEOUS CRIMINAL APPLICATION.

Dulip Singh for the applicant.

Gunn Chit Tuan (Senior Federal Counsel) for the respondent.

Abdul Hamid J. (delivering oral judgment): This is an application by Shirle Doris Gordon alias Alijah Gordon asking that the Banishment Order dated March 25, 1974 be set aside. This application is made under section 10 of the Banishment Ordinance, 1959. This section reads —

"10. Any person in respect of whom a banishment ... order has been made may within fourteen days of the service of a copy of such banishment order under sub-section (3) of section 5, ... apply to the High Court for an order that such banishment ... be set aside on the ground that he is a citizen of the Federation or an exempted person; and if it be proved on such application that such person is a citizen of the Federation or an exempted person the High Court shall set aside the banishment ... order ..., and direct that the applicant be set at liberty."

Now, the onus of proof is provided under section 17 of the Ordinance which states —

"17. If in any proceedings under this Ordinance or with reference to anything done or proposed to be done under this Ordinance, any question arises whether any person is a citizen of the Federation or an exempted person the onus of proving that he is a citizen of the Federation or an exempted person lies upon that person."

The order in this case was made pursuant to section 5 of the Banishment Ordinance. When the Minister is satisfied after such enquiry or on such written information as he may deem necessary or sufficient that the banishment of a person other than a citizen or an exempted person, would be conducive to the good of the Federation, he may make an order that such person be banished either for a term of his natural life or for such term as may be specified in such order. This court is not concerned with the grounds upon which the Minister came to be satisfied that the banishment of the applicant was conducive to the good of the Federation. This is entirely for the Minister alone to decide.